

REMARKS

Following entry of this preliminary amendment, the present continuation application will contain claims 5, 10, 14-16, 18-19, 25, 26 and 28. Claims 5, 10, 14, 16 and 25 have been amended. Claims 1-4, 6-9, 11-13, 17, 20-24, 27 and 29 are now canceled. Reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

A. Rejection Of Claims 5, 14-16 and 18-19 Under 35 U.S.C. § 103 (a)

In the Office Action mailed August 5, 2002 during prosecution of the parent case (ser. no. 09/444,083), claims 5, 8, 14-19 and 25-28 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over U.S. Patent 5,846,262 issued December 8, 1998 to Sayama et al. ("Sayama") in view of U.S. Statutory Invention Registration H1674 published August 5, 1997 to Ames et al. ("Ames"). Applicants traversed the Examiner's rejection of those claims in an Amendment dated December 5, 2002. In the Final Office Action dated February 21, 2003, the Examiner repeated the rejection with respect to claims 5, 8 and 14-19, but withdrew the rejection with respect to claims 25-28. Applicants thereafter filed a Request for Continued Examination and canceled claims 5, 8 and 14-19 so as not to delay allowance of the parent case.

In this preliminary amendment, Applicants have rewritten claim 5 in independent form, and have canceled claim 8. In addition, Applicants have amended claim 14 to include the limitation of claim 17 ("front side panels are longitudinally spaced from the back side panels"), as well as the additional limitations that the front and back side panels each define "a leg end edge disposed toward a longitudinal center of the absorbent article, the leg end edges extending from respective opposite linear side edges of the rectangular composite structure." Claim 14 has also been amended to correct an antecedent basis issue. Applicants believe that amended claims 5, 14-16 and 18-19 are patentable over Sayama/Ames, and offer the following remarks for the Examiner's consideration.

Independent claims 5 and 14 recite the limitation "wherein a transverse distance between the first and second fastening components is substantially equal to a transverse distance between the first and second mating fastening components." The transverse distance between a set of fasteners is defined as "the distance measured parallel to the transverse axis 49 between the longitudinal centerlines of the fasteners, measured with the side panels 34 and 134 in an unstretched condition." Specification, page 21, lines 13-16. Figures 2 and 3 illustrate an embodiment of the invention in which a transverse

distance between first and second fastening components is substantially equal to a transverse distance between first and second mating fastening components.

Neither Sayama nor Ames, nor the combination of the two, disclose an absorbent article wherein a transverse distance between first and second fastening components is substantially equal to a transverse distance between first and second mating fastening components. Specifically, Figure 1 of Sayama (referenced by the Examiner) discloses a pair of fastening components and a pair of mating fastening components, but the transverse distance between the longitudinal centerlines of the fastening components is not substantially equal to the transverse distance between the longitudinal centerlines of the mating fastening components. Thus, Sayama/Ames does not teach each and every claim limitation with respect to independent claims 5, 10 and 14.

The Examiner's position on this issue is incorrect. In the Final Office Action dated February 21, 2003, the Examiner stated:

[G]iven the broadest reasonable interpretation of the claim, a transverse distance can constitute the distance between any two points on the first and second fastening components and the distance between any two points on the first and second mating fastening components. Figure 1 of Sayama shows a portion of the mating fastening component is an equal distance from the longitudinal edge of the article as compared to a portion of the fastening component. Therefore, a transverse distance between the first and second fastening components is substantially equal to a transverse distance between the first and second mating fastening components.

File Wrapper of 09/444,083, Paper No. 21, page 2, paragraph 1 ("Response to Arguments"). The proper interpretation of the present claim language is the meaning explicitly set forth in Applicants' specification. The Court of Appeals for the Federal Circuit has made clear that when an applicant explicitly sets forth a definition of terminology employed in the claims, it is that definition that should be used to interpret the claims and to afford the claims their proper scope:

Patent law allows the inventor to be his own lexicographer. . . . [T]he specification aids in ascertaining the scope and meaning of the language employed in the claims inasmuch as words must be used in the same way in both the claims and the specification. United States v. Telectronics, Inc., 8 USPQ 2d 1217, 1220 (Fed. Cir. 1988), cert. denied, 490 U.S. 1046 (1989).

When the applicant states the meaning that the claim terms are intended to have, the claims are examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. In re Zletz, 13 USPQ 2d 1320, 1322 (Fed. Cir. 1989).

In view of these guidelines, the Examiner must interpret independent claims 5 and 14 in light of the explicit definition provided in the specification. When that is done, it is evident that Sayama/Ames does not teach each and every limitation of those claims.

Dependent claim 15 further recites that "the first and second fastening components are disposed in the back waist region abutting the back waist edge and the first and second mating fastening

components are disposed in the front waist region abutting the front waist edge." Sayama teaches covering the hook fasteners with a suitable sheet material to alleviate potential irritation. Col. 1, lines 32-52. As illustrated in Fig. 1 of Sayama, the protective sheet 18 extends over the peripheral area surrounding the hook fastener. To do so, the protective sheet is shown as abutting the waist edge. There is no disclosure or suggestion of how or why the hook fasteners of Sayama could abut the waist edge and be covered by the protective sheet 18. Therefore, Sayama teaches away from modifying the hook fastener to abut the waist edge. Accordingly, Sayama/Ames does not render dependent claim 15 obvious for at least this additional reason.

For at least the reasons articulated above, claims 5, 14-16 and 18-19 are believed to be patentable over the cited references.

B. Claims 10 and 25-28

Independent claim 10 has been rewritten in independent form to include all of the limitations of claim 1, from which it formerly depended. Claim 25 has been rewritten to include the limitations of claim 27, now canceled. Claims 10, 25, 26 and 28 in their present form are believed to be patentable over Sayama/Ames.

C. Conclusion

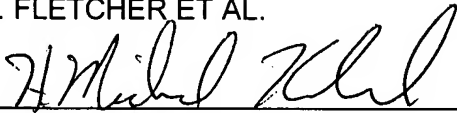
This continuation application now contains claims 5, 10, 14-16, 18-19, 25, 26 and 28 which are believed to be in condition for allowance. Applicants would like to thank the Examiner for the careful attention paid to the present application. Early allowance of the claims in view of the above amendments and remarks is earnestly requested.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-7844.

Respectfully submitted,

AMY L. FLETCHER ET AL.

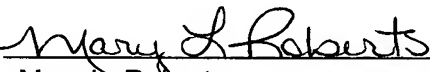
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